IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7031 of 2005

Between:

Mohd. Azhar-Ul-Hasan Naveed, S/o Md. Aijaz Hussain,
R/o H.No. 17-3A-518/F-56, E.W.S. Yakutpura,

New Colony, Hyderabad.

..... PETITIONER

AND

1 The Assistant City Planner, Circle No.1,

Municipal Corporation of Hyderabad,
Sardar Mahal, Hyderabad.
2 The Commissioner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad- A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent No.1 dated 28-3-2005 orally threatening to demolish the Petitioner's Mulgi bearing No. 17-3-2/15/6, situated at E.W.S. Colony, Yakutpura, Hyderabad, for the purpose of Road widening as illegal, void, violative of Sections 146 and 147 of H.M.C Act and also contrary to the Judgment of this Hon'ble Court made in W.P.No. 3052 of 2003 dated 19-2-2003 , and restrain the respondents from dispossessing the petitioner from the above Mulgi.

Counsel for the Petitioner: MR.MOHD.ZIA-UL-HAQ

Counsel for the Respondents: MR.RAMA RAO GHANTA

This Court at the stage of admission made the following:

ORDER:

The petitioner claims to be the owner of the premises bearing No.17-3-2/15-6 situated at E.W.S.Colony, Yakutpura, Hyderabad.

This writ petition is filed aggrieved by the alleged action of the first respondent in threatening to demolish the house of the petitioner for the purpose of road widening. It is stated that though notice has been issued, the staff of the first respondent has been orally threatening to demolish the petitioner's mulgi without following due process of law. Hence, this writ petition.

Having considered an identical question, a Division Bench of this Court in W.P.No.21198 of 1997, dated 03.02.1998, laid down the following directions: -

> "1.Whether a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.
>
> 2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days prior notice notifying as to the nature of the property to which it belongs and the proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorized occupation and also determine whether the property in question belongs to Government, any other local self government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.
>
> 3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages

quantified forthwith.

4. If the demolition is in respect of local bodies/Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures."

That apart, as per Sections-146 and 147 of the Hyderabad Municipal Corporation Act, 1955 (for brevity 'the Act') whenever the respondents are proceeding with the widening of the road, they are bound to acquire the required property either by way of negotiations or when they are unable to acquire any immovable property by way of negotiations, it is obligatory on their part to initiate the proceedings under the Land Acquisition Act.

In the circumstances, the learned standing counsel appearing for the respondent-Corporation states that the respondents will follow the due process of law as provided under the law before taking any steps.

Accordingly, the writ petition is disposed of with a direction to the respondents not to interfere with the possession of the petitioner in respect of the premises in question without following due process as prescribed under the law as well as the guidelines issued by the

Division Bench in W.P.No.21198 of 1997. No order as to costs.

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G.ROHINI, J

15.04.2005

Note:

Issue CC by

19.04.2005.

B/o

DR

To

1 The Assistant City Planner, Circle No.1,

Municipal Corporation of Hyderabad,
Sardar Mahal, Hyderabad.

2 The Commissioner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad- A.P.

3 2 CD copies.